

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.81 OF 2020**

Rajendra Gadge,
s/o. Raju Gadge, major of age,
Indian National, R/o.
H.No.762/B, Agnes Villa, Khoirut
Aldona, Bardez-Goa, Through
his POA Holder Rajkumar
Gadge, S/o. Raju Gadge, Major
of age, Indian National, R/o.
H.No. 762/B, Agnes Villa,
Khoirut Aldona, Bardez-Goa.

... Petitioner

Versus

- 1 State of Goa
Through the Chief
Secretary, having office at
Secretariat, Porvorim, Goa.
- 2 Deputy Town Planner,
Office of the Senior Town
Planner, North Goa District
Office,
Town and Country Planning
Department,
Govt. Buidling Complex,
Mapusa Goa.
- 3 Senior Town Planner,
Office of the Senior Town
Planner, North Goa District
Officer, Town & Country
Planning Department, Govt.
Building Complex, Mapusa
Goa.
- 4 Town and Country Planning
Board,
Through its Member
Secretary,

.... Respondents

Town and Country Planning
Department, Govt. of Goa,
2nd Floor, Dempo Tower,
Patto Plaza, Panaji Goa.

- 5 Chief Town Planner,
Office of the Chief Town
Planner, 2nd Floor, Dempo
Tower, Patto Plaza, Panaji,
Goa.
- 6 Town and Country Planning
Department,
Through its Secretary
having office at Secretariat,
Porvorim, Goa.

Petitioner in person.

Mr. D. Pangam, Advocate General with Mr. Prashil Arolkar,
Additional Government Advocate for the Respondents No.1 to
3,5 & 6.

**CORAM: REVATI MOHITE DERE &
M. S. JAWALKAR, JJ.**

**Reserved on : 25th November 2021
Pronounced on : 9th December 2021**

JUDGMENT : (*Per M.S. Jawalkar, J.*)

Petitioner in this petition seeks to challenge the order dated 23.08.2018, by which respondent no.2 - Deputy Town Planner refused to issue technical clearance for proposed construction in the property bearing Survey No.18/4 of Village Aldona, Bardez-Goa. It is refused on the ground that the conversion sanad issued in 1986 is no longer valid.

2. It is the case of the petitioner that, he is the owner of

the property known as “Dragachem Bata” or “Mainwado”, admeasuring about 1400 square metres. In the year 1986, the petitioner's predecessors in title had obtained conversion sanad dated 28.05.1986 in respect of the said property. That in the Regional Plan for Goa 2001 the said property was zoned as “settlement”. On the basis of said zoning the petitioner made an application dated 24.04.2017 to respondent no.2 to obtain technical clearance for construction in the said property. Documents pertaining to an adjacent property, which he obtained under RTI, were also submitted to the authorities by the petitioner to bring to the notice of the respondent no.2 that the petitioner's property had topographical similarities as well as similarities on the parameters required for obtaining technical clearance vis-a-vis the said adjacent property. Both properties shared a boundary and both had been marked as “settlement” in Regional Plan 2001 and as “paddy field” in Regional Plan 2021. The said file pertaining to the adjacent property was approved by respondent no.4 i.e. Town and Country Planning Board vide order dated 21.10.2013, in pursuance to which development project was undertaken and even completion certificate was issued by respondent no.2. He placed supporting documents on record.

3. Petitioner further submits that Respondent no.2, instead of issuing technical clearance order, forwarded the petitioner's file to the Chief Town Planner for opinion. However, respondent no.2 did not forward the file pertaining to the said adjacent property which petitioner has submitted along with his application. Vide letter dated 14.09.2017, respondent no.2 - Deputy Town Planner refused to grant technical clearance for construction to the petitioner. The said refusal was on the ground that the property of the petitioner bearing survey no.18/4 of village Aldona was zoned as "paddy field" in the Regional Plan for Goa 2021 and, therefore, development in the said property was contradictory to the said RPG 2021.

4. It is contention of the petitioner that adjacent property was granted technical clearance dated 21.10.2013 by respondent no.2 himself. Whereas in the case of the petitioner he chose to forward the petitioner's matter to the Chief Town Planner whilst withholding the vital information documents pertaining to the said adjacent property which caused grave prejudice to the petitioner. It is further submitted that petitioner applied for a copy of inter departmental notings in respect of his application and filed appeal on 06.10.2017 before the Chief Town Planner/appellate authority under Goa

Regulations of Land Development and Building Construction Act, 2008 wherein he produced order dated 09.04.2021 passed by the Chief Town Planer. By this order, all the projects/proposal which were based upon RPG 2021 were kept in abeyance with effect from the date of order till the government takes appropriate decision in the matter. By this order it is directed that pending draft and notification of fresh Plan the Regional Plan 2001 shall be used as a reference plan for the purpose of determining land use. As petitioner's property is earmarked as "settlement" in RPG 2001, on that count itself respondent no.2 ought to have granted technical clearance to the petitioner.

5. It is further contended that petitioner had also pointed out to the appellate authority that the document of the adjacent property submitted by the petitioner on the basis of which respondent no.2 granted technical clearance in respect of the said property and even completion certificate was also issued by respondent no.2 on approval by Chief Town Planner. Petitioner further cited order no.CTP/Tech/Gen/2015/4940 which states that conversion sanad is not required at the time of granting technical clearance by the Town and Country Planning Department.

6. Petitioner also brought to the notice of appellate authority the circular of the Government, wherein it is ordered that if the Regional Plan shows property in settlement zone then it is deemed to be converted and the procedure of obtaining conversion sanad can be done after obtaining technical clearance. Thus, even if petitioner's conversion sanad had expired, he could have obtained it later because as per prevailing laws it was not required at the time of obtaining technical clearance. The appellate authority vide order dated 13.11.2017 was pleased to direct the Senior Town Planner to decide/process the proposal of the appellant keeping in mind the procedure followed in the file no.TPBZ/2769/Aldona/TCP/13, pertaining to the adjacent property within a period of 15 days from the date of order.

7. Respondent no.4 - Town and Country Planning Board in its meeting dated 23.11.2017 took cognizance of errors in Regional Plan in respect of small individual plots and policy decision was taken that the cases should be considered on merits by undertaking necessary corrections/revisions in the Regional Plan. In the said meeting, the Board had adverted to errors in the Regional Plan 2021 wherein the lands were

erroneously earmarked as “paddy field” even though the character of the lands were similar to that of settlement zone.

8. It is further submitted by the petitioner that despite specific direction to decide the application within 15 days, respondent no.2 forwarded the file to Secretary of Town and Country Planning Department. The said authority raised some queries. Petitioner by filing representation dated 20.03.2018 addressed to those queries. He also drew attention of the Town and Country Planning Department to the order no.2918/TCP/2012-13/RPG/Status/1803 dated 04.06.2012, by which RPG 2021 was kept in abeyance and RPG 2001 was to be taken as the reference plan for the purpose of the approvals. As the property of the petitioner was identified as “Settlement Zone”, as per RPG 2001 technical clearance for the same could not be refused on the ground of it being contradictory to RPG 2021. Even as per order dated 09.12.2015, RPG 2021 was kept in abeyance and RPG 2001 was to be taken as the reference plan for the purpose of the approvals. It is contention of the petitioner that his property was identified under Settlement Zone as per RPG 2001 and technical clearance for the same could not have been refused on the ground that it being contrary to the RPG 2021. As per order dated 09.12.2015,

conversion sanad was not required for obtaining technical clearance.

9. In pursuant to the said representation dated 20.03.2018, respondent no.2 vide noting dated 04.04.2018 submitted proposal for approval of the government. The Secretary for TCP noted as under :

"In view of the fact that the sanad issued in 1986 is no longer valid, this case cannot be treated as past commitment."

This decision was confirmed by the Hon'ble Minister for TCP.

10. Being aggrieved by the order dated 04.04.2018, the petitioner filed an appeal before Town and Country Planning Department for review. Similarly, he also filed appeal before Chief Town Planner for seeking initiation of contempt proceedings. The said appeal was not decided. However, appeal before respondent no.4 - Town and Country Planning Board under Section 45. He also made representation to Minister for Town and Country Planning Department, Government of Goa.

11. Respondent No.4 dismissed the appeal on the ground

of non-maintainability. It is his contention that his representations are already filed but not decided.

12. Respondent no.2 vide order dated 23.08.2018 rejected the application for grant of technical clearance on the ground that conversion sanad issued in 1986 was no longer valid. Despite the reminder dated 10.10.2018, respondent no.2 did not consider the review application of the petitioner, hence he filed the present petition.

13. It is the main contention of the petitioner that order refusing to grant technical clearance is erroneous contrary to the relevant provisions of TCP Act. The order is passed without granting any opportunity of hearing. It is contrary to the order passed by the appellate authority dated 13.11.2017, as it was directed to consider the case of the petitioner keeping in mind the procedure followed in the file in respect of adjacent property. The validity of conversion sanad or the fact that the same had lapsed was not in any way relevant to the issue of technical clearance. The zoning in respect of the said property had attained finally under RPG 2001 and, therefore, validity of conversion sanad had no bearing on the right of the property to develop the said property as the same is not required at the

time of issuing technical clearance. The classification of the said property as “paddy field” in the 2021 plan is an error which had to be disregarded. The impugned order is made without adverting to all relevant facts and documentary evidence.

14. As against this, learned Advocate General submitted that the sanad dated 28.05.1986 as per clause 4 was lapsed on 28.05.1987. It is admitted that the petitioner's property was zoned as “settlement” in the Regional Plan for Goa 2001 and subsequently was zoned as “paddy field” in the Regional Plan of 2021. It is further submitted that though the plot of land of petitioner and survey no.18/2 are adjoining and similar in topography the facts and circumstances in which the technical clearance dated 21.10.2013 was granted to the owner of adjacent property are completely different to that of in petitioner's case. The said property in survey no.18/2 was purchased vide sale deed dated 08.09.2010 and was shown 'rice' in form I & XIV of the said property. It was earmarked as “settlement” in the Regional Plan for Goa 2001. On 29.10.2010, the owner of the said property applied to Collector for conversion of the use of land from agricultural to residential purpose.

15. It is further the contention of the learned Advocate General that though at the time of application for conversion the said plot was earmarked as “settlement” zone, as per Regional Plan for Goa 2001, the said plot of land was recorded as “rice” in Form I and XIV of the survey record. Therefore, the said application was referred to Committee constituted by the Government. Its decision was placed before the Town and Country Planning Board. Decision of the Town and Country Planning Board was also referred to the Government for approval and the Government approved the same. Thereafter, Deputy Town Planner issued the recommendation for conversion of the land and based upon such recommendation Collector issued the sanad dated 22.08.2013. Thereafter, technical clearance order dated 21.10.2013 came to be issued by TCP. Learned Advocate General lastly submits that there is no illegality in the order passed and petitioner cannot challenge administrative decision by invoking writ jurisdiction of this Court and, hence, the petition is liable to be rejected.

16. We have heard the petitioner in person and learned Advocate General, at length.

17. It appears that petitioner's predecessor in title had obtained conversion sanad dated 28.05.1986 in respect of survey no.18/4 of village Aldona. In 2001 the said property of the petitioner was zoned as "settlement" zone. In similarly situated case of the neighbour, on 21.09.2011, proposal for technical clearance was approved by respondent no.4 - Town and Country Planning Board. On 21.10.2013, technical clearance was granted and the adjacent property owner developed his project and completion certificate was also obtained by him. It appears that petitioner's file was forwarded to the Chief Town Planner, however, on 14.09.2017, he refused to grant technical clearance for construction.

18. Record shows that the petitioner filed an appeal before the Chief Town Planner/Appellate Authority under the Goa Regulation of Land Development and Building Construction Act, 2008 and Goa Right to Time Bound Services Act, 2013. The Appellate Authority was pleased to direct the Senior Town Planner to decide/process the proposal of the appellant keeping in mind the procedure followed in the file pertaining to the adjacent property bearing survey no.18/2 within a period of 15 days from the date of the order.

19. The Board, in November 2017, took the cognizance of errors in Regional Plan and policy decision was taken that cases of small individual plot should be considered on merit by undertaking necessary corrections/revisions in the Regional Plan.

20. Respondent No.3, i.e. Senior Town Planner instead of deciding/processing the application of the petitioner as per order passed by the appellate Authority dated 13.11.2017, forwarded the file to the Secretary of Town and Country Planning Department. Whatever queries were raised by the Secretary of the Town and Country Planning Department, the petitioner has satisfied the same. He has also pointed out the order no.2918/TCP/2012-13/RPG/Status/1803 in terms of which RPG 2021 was kept in abeyance and RPG 2001 was to be taken as the reference plan for the purpose of approvals.

21. Senior Town Planner, after order in appeal, forwarded note. In his note, he observed as follows :

2. Although the proposal is contradictory to the provision of RPG-2021, it is mentioned herewith that the applicant had obtained Conversion Sanad vide no.CNV/BAR/591/85 dated 28/05/1986 and hence the case under reference is considered under past commitment as per the note of RPG-2021 which states that "All past commitments/Developments like Sub-Division approvals by competent authorities,

conversion sanad under Land Revenue Code, building approvals/NOC's granted, shall be honored for specific uses if not reflected in the plan.

Although the validity of sanad has lapsed, the Dy. Collector, North Goa, Panaji, had issued Conversion Sanad on the basis of obtaining all necessary reports, hence it is considered as past commitment.

It is also informed that conversion sanad is not mandatory for issue of Technical Clearance as the same is issued based on the Regional Plan (may please see order at C/132). The present proposal under reference is for issue Technical Clearance.

22. In the said note, it was also observed that the case of the adjacent property owner i.e. Mr. Jose Rodrigues came to be referred in view of the circular dated 17.05.2010 and it was approved by the Board and the Government.

23. Thus, it is clear that the procedure was applicable to the cases which areas were marked as "settlement" in Regional Plan 2001 but which were recorded as "rice" on Form I & XIV. It is pointed out that decision of Chief Town Planner in appeal clearly held that the case of Jose Rodrigues and present petitioner are similar in regard to zoning in Regional Plan of 2001 - "settlement" zone and Regional Plan 2021 - "cultivated" land. As per Form I and XIV, both the properties are shown as "rice". Senior Town Planner in his note observed that though procedure as directed by the appellate Authority cannot be followed, however, for the reasons cited he

recommended the proposal to be considered for approval.

24. Learned Advocate Government has not disputed this fact that clearance certificate and conversion sanad are altogether different certificates and conversion sanad has no bearing with the clearance certificate. However, it is his contention that note of Secretary for TCP, cannot be challenged in writ jurisdiction as it is an administrative order and not a quasi judicial order. Secondly, conversion sanad has lapsed long back. He vehemently argued that while issuing administrative order no reasoning is required, still reasons stated are sufficient. It is also the contention of the learned Advocate General that it cannot be said to be past commitment and granting permission to other person may not necessarily give any right to the petitioner as illegality cannot be perpetuated. However, it is not claimed by the respondent that the certificate issued to the neighbouring property is illegality or issued illegally.

25. In our considered opinion, if exhibit B and C are perused, which is recommendation in respect of Mr. Jose Rodrigues, the case of Mr. Jose Rodrigues and petitioner appear to be on similar footing, if, the position is accepted that

conversion sanad and clearance certificate are two different approvals/ certificates. Senior Town Planner, in his note, clearly observed that though validity of sanad has lapsed, the Deputy Collector, North Goa, Panaji has issued conversion sanad on the basis of obtaining all necessary reports. Hence, it is considered as past commitment. It appears that no consideration is given to the note nor to the decision of appellate Authority on which the Secretary for TCP passed the impugned noting, which was confirmed by Hon'ble Minister for TCP, ultimately it resulted in to the petitioner to suffer civil consequences. It appears that without going through the note of TCP department, the Secretary for TCP Planning rejected the application. The note of Secretary TCP reads as under :

“In view of the fact that the sanad issued in 1986 is no longer valid, this case cannot be treated as past commitment, we may reject.”

26. This note was confirmed by Hon'ble Minister for TCP. True it is that administrative decisions may not always be required to give reasons, but there should be some documents, notings, in support of such decisions. In the facts of this case, there are no reasons stated for such conclusion, more particularly when there is detailed note in favour of the petitioner given by the TCP Department. Minutes of meeting of

the TCP Board dated 23.11.2018 clearly shows that there were many applications pending for clearance (item no.19) and it was decided that such cases should be considered on merits by undertaking necessary corrections/revisions in Regional Plan. Regarding changes in Regional Plan under Section 17 of TCP Act (item no.20), it was decided that considering the thousands of objections /suggestions received for Regional Plan 2021, it was felt more appropriate by the members that Regional Plan 2001 be adopted as the reference plan and matter was referred for suggestion to the Government.

27. Thus, Regional Plan for Goa 2021 is on hold and for approval Regional Plan Goa 2001 is to be taken as reference plan for land used. The property of the petitioner is shown as “settlement” in Regional Plan 2001. It is also clear that for obtaining technical clearance conversion sanad is not required. In view of the circular dated 15.10.1986, issued by the Government, if a land has been earmarked for a particular purpose under the Town and Country Planning Act, one can proceed to use it for the said purpose by merely paying the prescribed sanad fees. As per the circular dated 04.06.2012, issued by Chief Town Planner, all projects based on RPG 2021 were to be kept in abeyance till Government takes appropriate

decision in the matter. Pending the fresh plan, the Regional Plan 2001 shall be used as a reference plan for the purpose of determining the land use subject to certain conditions.

28. Thus, in our considered opinion, the note/administrative decision taken by Secretary for TCP and confirmed by the Hon'ble Minister for TCP is without considering any of the facts and position discussed above, resulting in serious injustice to the petitioner and hence are liable to be set aside.

29. As such, this Court quashes and sets aside the decision dated 04.04.2018 of the Secretary for TCP, which is confirmed by the Hon'ble Minister for TCP on 16.04.2018 and consequential order dated 23.08.2019 issued by the respondent no.2. This Court further directs the respondents to decide the application of the petitioner for issuance of technical clearance certificate afresh, if necessary, by granting opportunity of hearing as expeditiously as possible and preferably within three months from the date of receiving of this order.

30. As such, the petition is allowed and Rule is made absolute on the aforesaid terms.

31. All parties to act on the authenticated copy of this order.

M. S. JAWALKAR, J.

REVATI MOHITE DERE, J.

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